

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THERESA MARTINEZ,

Plaintiff,

v.

No. _____

STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.,

Defendant.

NOTICE OF REMOVAL

Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”), by and through its counsel of record, Miller Stratvert P.A. (Todd A. Schwarz and Stephen B. Waller), hereby gives notice of removal of this matter to the United States District Court for the District of New Mexico as follows:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant State Farm hereby gives notice of removal of all counts and claims asserted by the Plaintiff in the civil action filed in the Second Judicial District, County of Bernalillo, State of New Mexico, styled: Theresa Martinez v. State Farm Mutual Automobile Insurance Co.; Second Judicial District Cause No. D-202-CV-2016-04663 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on State Farm to date are attached hereto as Exhibit 1 (Summons and copy of transmittal letter from Office of Superintendent of Insurance) and Exhibit 2 (copy of the below-defined Complaint).

2. Plaintiffs’ original filing, which is titled as “Complaint for Personal Injuries, Money Damages, Bad Faith, Breach of Contract, Violations of the New Mexico Unfair Claims Practices and Unfair Trade Practices Acts” (hereinafter the “Complaint”), was filed in the

Second Judicial District Court on July 28, 2016. The Complaint and Summons were served on Defendant State Farm through the State of New Mexico, Office of Superintendent of Insurance, which accepted service on August 15, 2016. *See* Exhibit 1. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) within thirty (30) days of service of the Complaint and Summons.

3. Defendant State Farm states that this is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the sole Plaintiff and the sole Defendant, and the amount in controversy exceeds \$75,000.00.

4. The Complaint asserts that Plaintiff is a resident of Bernalillo County, New Mexico. *See* Exhibit 2, Complaint ¶ 1.

5. The Complaint asserts that Defendant State Farm “is a foreign, for-profit corporation” (*see* Complaint ¶ 2). State Farm admits this allegation. State Farm is a resident of the State of Illinois, as it is incorporated in Illinois and has its principal place of business in the State of Illinois. *See*, Defendant’s Corporate Disclosure Statement filed concurrently herewith.

6. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. The following is established on the face of the Complaint. This case involves an actual controversy between Plaintiff, on the one hand, and Defendant State Farm, on the other hand, regarding insurance coverage and insurance practices. Plaintiff alleges that she at one time had an insurance policy issued by State Farm, that such policy provided for “Uninsured/Underinsured motorist coverage limits in the amount of \$25,000/\$50,000” (*see* Complaint ¶ 8), and that State Farm wrongfully refused to pay such amount to Plaintiff in

connection with a motor-vehicle accident that occurred on November 12, 2014. *See* Complaint ¶¶ 4-23.

8. Plaintiff further alleges that she is entitled to an award of punitive damages against Defendant State Farm. *See* Complaint ¶ 23.

9. Plaintiff further alleges that Defendant State Farm has violated the New Mexico Unfair Claims Practices Act and the New Mexico Unfair Practices Act and that Plaintiff “has sustained damages, in addition to the damages common to all counts of [the] Complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys’ fees, and interest on the sums owed under the policy.” *See* Complaint ¶¶ 24-51.

10. In her Prayer for Relief, Plaintiff seeks judgment against Defendant State Farm “for all compensatory damages; punitive damages; treble damages as allowed under New Mexico law; pre- and post-judgment interest; attorney fees and costs; and all other relief that the Court deems just and proper.” *See* Complaint at 8.

11. Without admitting any of the foregoing allegations, Defendant State Farm respectfully submits that the aggregate “value” of what Plaintiff seeks to recover in this case, including Plaintiff’s claim for punitive damages, exceeds \$75,000.00. *See Wiatt v. State Farm Ins. Co.*, 560 F. Supp. 2d 1068, 1075 (D.N.M. 2007) (providing court may “aggregate actual damages, punitive damages, attorneys’ fees, and statutorily imposed penalties” when determining whether jurisdictional amount requirement is satisfied).

12. The United States Supreme Court has recently clarified that “as specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required

by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

13. Notice is being provided to Plaintiffs of the filing of this Notice as required by 28 U.S.C. § 1446(d).

14. A copy of this Notice will be filed with the Clerk for the District Court for Bernalillo County in the State Court Action as required under 28 U.S.C. § 1446(d).

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Todd A. Schwarz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of September, 2016, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following participating CM/ECF counsel to be served with same by electronic means and via U.S. Mail to:

David M. Houliston
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Albuquerque, NM 87102
Telephone: (505) 247-1223

/s/ Todd A. Schwarz

Todd A. Schwarz